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TRADER JOE'S COMPANY and TRADER JOE'S EAST INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Trader Joe's Tuna Litigation

Case No. 2:16-cv-01371-ODW (AJW)

**DEFENDANT TRADER JOE'S
COMPANY AND TRADER JOE'S
EAST INC.'S NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
CLASS ACTION COMPLAINT**

Hearing Date: May 1, 2017
Hearing Time: 1:30 p.m.
Courtroom: 5D
Judge: Hon. Otis D. Wright II

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 1, 2017, at 1:30 p.m., before the Honorable Otis D. Wright, II, United States District Judge for the Central District of California, First Street Courthouse, 350 W. 1st Street, Los Angeles, CA 90012, Courtroom 5D, 5th Floor, Defendants Trader Joe's Company and Trader Joe's East Inc. (collectively, "Trader Joe's") will and hereby do move the Court for an order dismissing with prejudice the First Amended Class Action Complaint ("FAC") (Doc. No. 38), filed on January 20, 2017 by Plaintiffs Sarah Magier ("Magier") and Atzimba Reyes ("Reyes") (collectively, "Plaintiffs").

Trader Joe's moves to dismiss the FAC with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6), on the following grounds:

1. Plaintiffs' claims, as pleaded, are preempted by the Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301-399h;
2. Plaintiffs' claims raise issues within the primary jurisdiction of the Food and Drug Administration;
3. Plaintiffs' failure to plead a misrepresentation or actual reliance dooms their claims for fraud, negligent misrepresentation, breach of express warranty, unjust enrichment, violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*, and Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, and violation of New York General Business Law §§ 349 and 350;
4. Plaintiffs' consumer-protection claims under the CLRA, UCL, FAL, and N.Y. Gen. Bus. Law §§ 349 and 350 additionally fail because, as a matter of law, no "reasonable consumer" would be deceived by the challenged conduct;

5. Plaintiffs' negligent-misrepresentation claim is barred by the economic-loss rule and, as to Magier's claim, for failure to allege that Magier and Trader Joe's were in a "special relationship";
6. Plaintiffs fail to state claims for breach of express or implied warranty because they do not allege that they provided reasonable and timely notice to Trader Joe's regarding any asserted product deficiencies, and the breach-of-implied-warranty claim additionally fails because Plaintiffs have not alleged that the canned tuna they bought was not fit for its intended purpose—consumption; and
7. Finally, there is no standalone cause of action for unjust enrichment in California, New York law requires dismissal of an unjust-enrichment claim if it simply duplicates or replaces a conventional contract or tort claim, and Plaintiffs do not allege that Trader Joe's was unjustly enriched at Plaintiffs' expense.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the concurrently filed [Proposed] Order and Request for Judicial Notice (and all papers submitted in support thereof), the Declaration of John DeBeer, all of the pleadings, files, and records in this proceeding, all matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

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The motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on Monday, March 13, 2017.

DATED: March 21, 2017

BUCHANAN INGERSOLL & ROONEY LLP

By: /s/ Robert J. Parks

ROBERT J. PARKS

KEITH R. SOLAR

DOUGLAS W. GILLIE

Attorneys for Defendants

TRADER JOE'S COMPANY and TRADER
JOE'S EAST INC.

CERTIFICATE OF SERVICE

I certify that on March 21, 2017, I filed the foregoing REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS with the Clerk of the Court for the United States District Court, Central District of California by using the Court's CM/ECF system, which will send notifications of such filing to all counsel of record.

DATED: March 21, 2017

BUCHANAN INGERSOLL & ROONEY LLP

By: /s/ Robert J. Parks

ROBERT J. PARKS

Attorney for Defendants

Trader Joe's Company and Trader Joe's East Inc.